

Award No. 12112

Docket No. MW-10857

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY
(Lines West of Mobridge)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, from July 8, 1957 to and including November 1, 1957 it assigned or otherwise permitted an individual (Nichols) holding no seniority under the effective Agreement to perform Machine Operator's work at Tunnels 11 and 12.

(2) Each employe holding seniority as a Machine Operator on Lines West of Mobridge (Seniority District 2 of the Roadway and Machine Sub-department—Rule 5-d) be allowed pay at his respective time and one-half rate for an equal proportionate share of the total number of man hours consumed by Mr. Nichols in performing the work referred to in Part (1) of this claim for the period extending from sixty (60) days prior of claim presentation to and including November 1, 1957. (Claim presented on 11-5-57.)

EMPLOYEES' STATEMENT OF FACTS: Because of the accumulation of water in Tunnels 11 and 12 on the Rocky Mountain Division, the Carrier decided to install a drainage system therein by installing tile with a backfill of coarse gravel.

In order to perform the trenching and backfill work, the Carrier rented, from a Mr. Nichols of Whitehall, Montana, a rubber tired International Tractor which was equipped with a backhoe attachment at the rear for the trenching work and with an endloader attachment on the front end for the backfilling work. The Carrier also rented a dump truck from Mr. Nichols, which was used to haul the excavated dirt outside of the tunnel. This dump truck was operated by an employe coming within the scope of this Agreement.

However, the combination backhoe-tractor-endloader was not operated by an employe coming within the scope of this Agreement, but was operated by the aforesaid Mr. Nichols who was carried on the Carrier's pay rolls and compensated at the section laborer's rate for his services as such. Mr. Nichols

All basic data contained herein has been made known to the employees.

OPINION OF BOARD: This is a Scope Rule case. The Carrier has claimed, inter alia, that the Claimants are not properly identified under Article 5 of the August 21, 1954 Agreement. A study of the Awards of this Division on this subject shows that in Awards 11372 and 11373 involving this same Carrier and Organization the claim was dismissed. The claims in the instant case are drafted in almost identical form as those found in the afore-mentioned awards and it cannot be said that those awards were palpably wrong. Therefore, a dismissal of the claim is in order.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.